In the High Court of Judicature for Rajasthan Jaipur Bench

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Cr. Misc. Petition No.165/1998
Kaluram Meena ***Versus*** State & (3) Ors.

Date of Order ::: 24/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Biri Singh & Mr.RajeshChoudhary, for petitioner (accused)
Mr. Arun Sharma, Public Prosecutor for State.
Mr. Ganesh Meena, for respondent No.3 & 4 (accused)
Mr. M.C.Jain for complainant (respondent No.2)

Instant petition U/s 482 CrPC has been filed for quashing of proceedings pending before Addl. Chief Judl. Mag. No.6, Jaipur City in Complaint Case No.210/97 instituted vide order dt.21/04/97 whereby learned Magistrate took cognizance of offence U/Ss 420, IPC.

Respondent No.2 (complainant) filed complaint on 04/04/96 inter-alia allegeding that petitioner who is property dealer, has shown a plot No.A-56, Saraswati Nagar Jaipur measuring 240 sq.yds with constructed rooms and boundary wall having stone cutting machine motor shed besides stock of stone and electricity & water supply connections thereon and the petitioner told the complainant that Smt. Lalita (respondent No.3) is owner of the plot and is intended to sell it and when petitioner was asked about title

whereof, he told that this plot in fact is looked after by her husband (Bhanwarlal-respondent No.4) and Smt. Lalita Devi (respondent NO.3) projected herself as owner of the plot; and since Bhanwarlal was working as Sub Inspector in Police Department, he could not do the deal in his name, therefore, the plot was owned by Lalita Devi who is running business of stone cutting in her own name having registration certificate issued by District Industries Centre besides permission from Municipal Council, Jaipur, It was further alleged that on assurances extended to the complainant that original documents since were lying at their native village, will be handed over later on, the the plot was agreed to be sold for consideration of Rs.1.5 lacs, along with constructed area besides stock shed, stone cutting machine and electricity & water connection for additional sum of Rs.1,50,100/- and entire deal was struck for total sum of Rs. 3,00,100/-, against which complainant paid in cash Rs.10,000/- and Rs.21,000/- by a cheque dt. 31/03/93 drawn on Bank of Rajasthan in favour of Smt. Lalita and for remaining consideration, it was agreed to be paid latest by 30/04/1993; but any how, vacant possession was not handed

over, for which no further steps were taken; therefore, when he tried to find out truth then it came to his notice that Smt. Lalita was wrongly projected as owner of the plot while taking Rs.31,000/- as an advance to sale consideration whereas in fact her father in law was the owner and when he demanded refund of money taken in advance – receipt whereof was duly signed by Smt. Lalita and attested by petitioner and thus failure to refund of such amount has led to the instant complaint.

On the said complaint, statements U/Ss 200 & 202 CrPC were recorded and taking note whereof, learned Magistrate took cognizance of offence U/S 420, IPC against petitioner and so also co-accused (respondent Nos.3 & 4) vide order dt.21/04/97. Hence this petition.

Counsel for petitioners submits that money was paid to Smt. Lalita and petitioner was only a broker and witness to the receipt which only verified payment whereof in his presence; as such he is not liable any further in such circumstances, very cognizance taken against him for offence U/s 420 IPC is not sustainable and is a manifest error committed by learned Magistrate under order impugned.

Both, Public Prosecutor and Counsel for complainant supported the order impugned and submit that cognizance has been taken on the basis of contents of complaint & statements recorded U/s 200 & 202 CrPC, which disclose prima facie material and in such circumstances no error has been committed in taking cognizance of offence U/s 420 IPC against petitioner and certainly what has been submitted can at best be his defence to be considered at the stage of frame of charge or at the stage of trial.

Counsel for co-accused (respondent Nos.3 & 4) submits that in fact entire money has been paid by petitioner to them and they handed over possession of the plot and are in fact not concerned with, since they were no more owner of the plot and as per their information, petitioner has sold the plot to some one-else.

I have considered contentions of Counsel for the parties and with their assistance, examined material on record. As soon as complaint is filed by complainant, statements are recorded U/s 200, & 202 CrPC. In instant case, complaint and statements recorded certainly disclose prima facie material which connect the petitioner with commission of criminal offence and it is the

petitioner who has misrepresented the complainant in exhibiting and projecting Smt. Lalita as owner of the plot in question while making payment of Rs.31,000/-, receipt whereof as duly signed by Smt. Lalita and attested by petitioner, who might have signed as witness but it was well within his knowledge that the plot was not belonging to her and still cheated the complainant and dishonestly induced him while entering into transaction and on their bonafide belief, the complainant as alleged in the complaint has paid a sum of Rs. 31,000/- to Smt. Lalita, who in fact was not owner of plot in question but was only rendering her business having registration of her firm.

Complaint and statements recorded U/s 200 & 202 CrPC prima facie disclose that the accused had dishonest & fraudulent intention at the time when complainant parted with the money and their intention was to deceive complainant when inducement was being conferred.

After going through the order taking cognizance and examining the complaint so also statements recorded U/s 200 & 202 CrPC, this Court does not find any error committed while taking cognizance vide order impugned which may call for interference.

As regards submissions made by Counsel for petitioner and so also other -co-accused, it can be their defence but cannot be looked into at the stage of taking cognizance.

Consequently, misc. petition fails and is hereby dismissed alongwith stay petition No. 117/98. Record be sent back to the court below forthwith to expedite the trial, itself.

(**Ajay Rastogi), J.**

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